Supreme Court, U.S.
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No. 10-525 OCT 15 2010

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In The

Supreme Court of the United States

IN RE: WILLIAM E. ORCUTT

**On Petition For Writ Of Mandamus
To The United States Court Of Appeals
For The Tenth Circuit**

PETITION FOR WRIT OF MANDAMUS

WILLIAM E. ORCUTT, Pro se
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QUESTIONS PRESENTED FOR REVIEW

1.) Does the Federal District Court lack subject matter jurisdiction?

2.) Does the *Rooker-Feldman Doctrine* foreclose jurisdiction to a Federal District Court when *different* issues are presented to the Federal District Court than in a State Court?

3.) Do litigants need to exhaust their administrative remedies prior to bringing a Title 42 U.S.C. § 1983 suit in Federal Court while there are other pending matters?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are:

William E. Orcutt, Petitioner

Brandon Libel, In His Individual Capacity Only – Respondent

Tony Libel, In His Individual Capacity Only – Respondent

Brice Libel, In His Individual Capacity Only – Respondent

Joel R. Euler, In His Individual Capacity Only – Respondent

Ira Dennis Hawver, In His Individual Capacity Only – Respondent

James A. Needham, In His Individual Capacity Only – Respondent

Thad Geiger, In His Individual Capacity Only – Respondent

City of Elwood, State of Kansas, In Its Individual Capacity Only – Respondent

Darrell Lamme, In His Individual Capacity Only – Respondent

Larry Hunsaker, In His Individual Capacity Only – Respondent

Doniphan County, State of Kansas, In Its Individual Capacity Only – Respondent

Jerry R. Dubach, In His Individual Capacity Only – Respondent

Robert Orcutt, In His Individual Capacity Only – Respondent

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

United States Court of Appeals for the Tenth Circuit Order and Judgment on June 9, 2010 dismissing Plaintiff's-Appellant's claims against Defendants-Appellees and Order denying Plaintiff's-Appellant's petition for rehearing on July 15, 2010.

JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under Title 28 U.S.C. § 1651(a) and U.S. Supreme Court Rule 20 (especially) "except in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The Constitution of the United States of America, Fifth and Fourteenth Amendment rights of due process and equal protection under the law.

The United States Constitution, Fifth Amendment, states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service

> in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The United States Constitution, Fourteenth Amendment, Section 1, states:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

The Plaintiff-Appellant was denied his constitutional rights and a Complaint was filed in the United States District Court for the District of Kansas. An appeal was made to the United States Court of Appeals for the Tenth Circuit which was denied as well as a petition for an en banc hearing.

STATEMENT OF THE ISSUES

1.) Whether the Federal District Court lacked subject matter jurisdiction.

2.) Whether the Honorable Tenth Circuit Appellate Court erred in dismissing Plaintiff-Appellant's case, ruling that the *Rooker-Feldman Doctrine* forecloses jurisdiction to a Federal District Court when different issues are presented to the Federal District Court than in a State Court.

3.) Whether litigants need not to exhaust their administrative remedies prior to bringing a Title 42 U.S.C. § 1983 suit in Federal Court while there are other pending matters.

STATEMENT OF RELIEF SOUGHT

The Petitioner requests and demands that his due process of law and equal protection of the law under the Fifth and Fourteenth Amendments of the U.S. Constitution be respected. This means that the Petitioner is entitled to his case being treated as separate and apart from a State case which had different issues than the Federal case.

REASONS WHY THE WRIT SHOULD ISSUE

The U.S. Supreme Court has spoken concerning the issues involved in this instant case while it was pending. The Honorable District Court has

refused to recognize and/or follow the rulings of the U.S. Supreme Court in violation of the rule of law. This Honorable Appellate Court has spoken on the fundamental rule of law principle that must be applied to this instant case as follows:

> *"It is a fundamental rule of law that a trial court is required to honor and respect the rulings and mandates by appellate courts in a case. See* ***Casey v. Planned Parenthood****, 14 F.3d 848, 856 (3rd Cir. 1994). The rule is fundamental to the effective operation of our multitiered judicial system. See* ***Litman v. Mass. Mut. Life Ins. Co.****, 825 F.2d 1506, 1508 (11th Cir. 1987). It accounts for our orderly system of justice, which in turn contributes in a substantial way to the overall stability of our society. Since its earliest days, the United States Supreme Court recognized that "an inferior court has no power or authority to deviate from the mandate issued by an appellate court."* ***Briggs v. Pennsylvania R. Co.****, 334 U.S. 304, 306, 68 S.Ct. 1039, 1040, 92 L.Ed. 1403, 1405 (1948).*

City of Okoboji v. Iowa District Court for Dickson County, No. 130/06-1483 (2008). (Emphasis added.)

The District Court Order ignores the established principles of law.

Stare decisis –

"The bedrock of stare decisis is that lower courts are bound by the precedential authority of cases rendered by higher courts. *U.S. Ex Rel. Shore v. O'Leary*, 833 F.2d 663 at 667 (7th Cir. 1987). This limitation on judicial power is one of the cornerstones of the legal structure in that it serves broader societal interests such as the orderly and predictable application of legal rules." *Miller v. U.S.*, 868 F.2d 236 (1989).

"One foundation block of our judicial system is the principle of stare decisis, which demands adherence to precedents. Decisions are made in accord with previous authoritative decisions in similar cases emanating from one's own circuit and from the Supreme Court. A lower court owes deference to those above it; ordinarily it has no authority to reject a doctrine developed by a higher court. See, e.g., *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535, 103 S.Ct. 1343, 1344, 75 L.Ed.2d 260 (1983) (per curiam); *Perri v. Director, Dept. of Corrections of Ill.*, 817 F.2d 448, 451 n. 4 (7th Cir. 1987)." *U.S. ex rel. Shore v. O'Leary*, supra.

"Needless to say, *only this Court may overrule one of its precedents*. Until that happens [our decision] is the law . . . " (Emphasis added.) *Thurston Motor Lines, Inc. v. Jordan Rand, Ltd.*, 460 U.S. 533.

The Petitioner pled throughout the Complaint that his constitutional rights were violated. Due process and equal protection are constitutional rights that the Appellees violated. The *Rooker-Feldman Doctrine* does not apply in this case.

The Federal Court did not lack subject matter jurisdiction.

The jurisdiction to try this case is under Title 42 U.S.C. § 1983; the Petitioner is entitled to the Federal jurisdiction as asserted under Title 28 U.S.C. § 1343, which in material part reads as follows:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:"
>
> "To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

The *Rooker-Feldman Doctrine* would not bar an action in this case.

The Petitioner in this case was *not* asking a Federal District Court to overturn an injurious court judgment and is *not* challenging the merits of the case which makes the *Rooker-Feldman Doctrine* inapplicable. *Exxon Mobil Corp. v. Saudi Basic Indus.*

Corp., 544 U.S. 280, 125 S.Ct. 1517 (2005). The Petitioner in this case is only asking for damages from individual Defendants-Appellees for only their personal wrongful acts against the Petitioner to be paid with individual funds, not state funds.

Additionally, the overt wrongful acts or counts in the original complaint are all in the context of bad faith and harassment, outside of any state interests. Federal law rights were violated by the Defendants-Appellees in this instant case, leaving them open for a § 1983 lawsuit. The Federal Court must intervene because the state proceedings did not provide a meaningful opportunity to adjudicate constitutional claims. *Middlesex Ethics Comm. v. Garden State Bar Assn.*, 102 S.Ct. 2515 (1982). Under *Ex Parte Young*, 209 U.S. 123 (1908) and its progeny, a suit challenging the legality under federal law of a state official's action in enforcing state law is not a suit against the state, and hence is not subject to state or federal exhaustion requirements. *Id.* at 159-160. *Duke Energy Trading and Marketing v. Davis,* 267 F.3d 1042 (9th Cir. 2001), supra. Therefore, the Defendants-Appellees stand as *individuals-only* before this court.

The Defendants-Appellees must show that their alleged unconstitutional acts were within the perimeter of their authority and discretion. *Butz v. Economou*, 438 U.S. 478, 483-484 (1978). The Defendants-Appellees started their individual illegal and unconstitutional acts because they were unable to legally deal with the Petitioner, by virtue of their not qualifying to be *peer reviewers* of the Petitioner.

Any defenses are definitely outside the jurisdiction and authority of the Defendants-Appellees.

The record is that the State Court could not control the state officers in any *individual* capacity in this case. The State Court has no jurisdiction, authority or control over those same persons in their individual capacity. The issues in the Title 42 U.S.C. § 1983 suit go beyond the merits dealing with state officials. The Defendants-Appellees were acting beyond their official capacity by using out-of-practice-area, non-peer intimidation, fraud, and deceit to thwart the Petitioner.

Defendants-Appellees violated Petitioner's civil and Constitutional rights by trespassing, breaking and entering, inappropriate treatment of Petitioner's private property from his home and businesses which is theft.

The Complaint involved an individual who alleged violations of the U.S. Constitution by individuals. The State Court actions alleged a violation of a state statute.

1.) The Complaint involved parties in their private or individual capacities not in their public or official capacities. The Plaintiff was prosecuted for his acts dealing with the public.

2.) The Complaint involved non-official members as parties or defendants.

3.) The Complaint involved merits involving violations of constitutional rights of due process of law, equal protection under the law, etc. of an individual.

In 2005, the U.S. Supreme Court sharply limited the scope of the *Rooker-Feldman Doctrine* in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, supra. The effect of the *Exxon Mobil*, supra, case has been recently described by one lower Federal court considering its jurisdiction as follows:

The *Rooker-Feldman Doctrine* is jurisdictional in nature. It provides that lower federal courts lack jurisdiction to engage in appellate review of state court determinations. *Bolden v. Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006). Only the United States Supreme Court may do so. *Id.* It is distinct from other preclusion doctrines, such as collateral estoppels and res judicata, not only because it is jurisdictional in nature, but also because it is applicable only in very limited circumstances. As explained by the Supreme Court:

> The Rooker-Feldman doctrine is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine.

Exxon Mobil Corp. v. Saudi Basic Industries Corp., supra. The *Exxon Mobil* Court further emphasized that *Rooker-Feldman* does not stop a federal court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a Federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Id.* at 293, 125 S.Ct. 1517 [quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)]. In other words, when the federal court tries a matter anew and reaches a conclusion contrary to a judgment rendered by a state court, without concerning itself with the bona fides of the prior judgment, it is not conducting appellate review. *Bolden v. City of Topeka*, supra. It is only when the claim or defense raised seeks specifically to attack the prior state court judgment or seeks relief for injury caused by the state court judgment that the *Rooker-Feldman Doctrine* applies. *In re Jensen*, 395 B.R. 472, 489 (B.C. D. Colo. 2008).

Petitioner's claims are not barred by *Younger Abstention Doctrine.*

Exhaustion of state court remedies is not required under *Younger v. Harris*, 401 U.S. 37 (1971).

"The application of the *Younger* principle to pending state administrative proceedings is fully consistent with *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982), which holds that litigants need not exhaust their administrative remedies prior to bringing a § 1983 suit in federal court. *CF Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607-611 (1975)." *Ohio Civil Rights Comm'n v. Dayton Schools*, 477 U.S. 619 (1986); *McNeese v. Board of Education,* 373 U.S. 668 (1963); *Younger v. Harris*, 401 U.S. 37. As these cases support, an exhaustion of state court remedies is not required in this Petitioner's Federal case.

There are three exceptions to the *Younger Abstention Doctrine*:

1.) Where the prosecution is in bad faith (i.e. the state knows the person to be innocent); or

2.) Where the prosecution is part of some pattern of harassment against an individual; or

3.) Where the law being enforced is utterly and irredeemably unconstitutional.

All three exceptions apply in this case.

CONCLUSION

This Petition for Writ of Mandamus must be granted and the Order must be abated concerning the

Appellate Court's dismissal due to the *Rooker-Feldman Doctrine* and the *Younger Abstention Doctrine*.

THEREFORE, Appellant moves this Honorable Appellate Court to: 1) rule in favor of Petitioner on all counts, 2) order Defendants-Appellees to pay their acquiesced debt(s), 3) order all of the Defendants-Appellees to comply with Petitioner's discovery requests within thirty days, and 4) to enter an Order to overturn the Appellate Court's and District Court's judgments in their misunderstanding of the issues.

Respectfully submitted,

Date: October 15, 2010

WILLIAM E. ORCUTT, Pro se
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(816) 617-2824

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

WILLIAM E. ORCUTT,

Plaintiff-Appellant,

v.

BRANDON LIBEL; TONY LIBEL; BRICE LIBEL; JOEL R. EULER; IRA DENNIS HAWVER; JAMES A. NEEDHAM; THAD GEIGER; CITY OF ELWOOD, KANSAS; DARRELL LAMME; LARRY HUNSAKER; DONIPHAN COUNTY, KANSAS; JERRY R. DUBACH; ROBERT ORCUTT, also known as Bobby Dean Orcutt, in their individual capacities only,

Defendants-Appellees.

No. 09-3293
(D.C. No. 2:09-CV-02025-MLB-DJW)
(D. Kan.)

ORDER AND JUDGMENT*

(Filed Jun. 9, 2010)

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **McKAY**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and **EBEL**, Circuit Judge.

Plaintiff-appellant William Orcutt, appearing pro se, appeals the dismissal of his complaint under 42 U.S.C. § 1983. In his complaint, Mr. Orcutt asserted thirty-five claims against thirteen defendants. The defendants were various attorneys, state employees, and witnesses involved in three state court actions concerning Mr. Orcutt. The first two were foreclosure actions brought by Farmers State Bank of Wathena, Kansas (Farmers) and Troy State Bank of Troy, Kansas (Troy) to recover debt owed by Mr. Orcutt. Mr. Orcutt lost these suits and did not appeal from the judgments. The third action was a criminal action in which Orcutt was convicted of impairment of a security interest under Kansas law. His criminal appeal was pending at the time he filed his federal complaint.

The district court dismissed all but four of the claims in Mr. Orcutt's complaint pursuant to *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), noting that under the *Rooker-Feldman* doctrine, it had no jurisdiction to review the state court civil orders at issue in the complaint. Two of Mr. Orcutt's claims appeared to question the ongoing criminal proceedings against him. The district court abstained from considering those claims under the doctrine set forth in *Younger v. Harris*, 401 U.S. 37

(1971). Mr. Orcutt's final two claims appeared to contend that defendants violated certain criminal laws. The district court dismissed those two claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), on the ground that private citizens cannot prosecute criminal actions unless a private right of action is expressly provided. Mr. Orcutt appeals the dismissals under the *Rooker-Feldman* and *Younger* abstention doctrines.

We have jurisdiction over Mr. Orcutt's appeal under 28 U.S.C. § 1291. Although it appears that a counterclaim against Mr. Orcutt remains outstanding, the district court certified its dismissal of Mr. Orcutt's claims as final pursuant to Federal Rule of Civil Procedure 54(b). This court reviews de novo a district court's decision to abstain from exercising jurisdiction under the *Younger* doctrine. *Amanatullah v. Colo. Bd. of Med. Exam'rs*, 187 F.3d 1160, 1163 (10th Cir. 1999). We likewise review de novo a district court's dismissal of a complaint for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1165 (10th Cir. 1998).

We have carefully reviewed the parties' appellate briefs, the district court's order, and the remainder of the appellate record. It seems clear from the complaint that Mr. Orcutt intends to directly attack the state court decisions. He asserts that the foreclosures were illegal and seeks "an immediate temporary injunction due to the continuing abuse, actions and violations of substantial rights caused by the

Defendants." R., Vol. 1, Part 1 at 27. He also seeks monetary damages against a variety of government actors and private individuals; it appears that most of these damages are for actions taken in complicity with the state court's foreclosure decisions. Therefore, these claims are "inextricably intertwined" with those foreclosure decisions because they "assert injuries based on the [state court decisions] and, for [him] to prevail, would require the district court to review and reject those [decisions]." *See Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007). To the extent that Mr. Orcutt is seeking to have the district court enjoin the state court decisions, or is seeking damages from the defendants for actions taken in compliance with those decisions, the dismissal is affirmed for substantially the reasons set forth in the district court's September 23, 2009 dismissal.

We note, however, that the claims in Mr. Orcutt's complaint are so conclusory that we are unable to discern exactly what acts he is complaining about, or who is supposed to have committed those acts. Thus, he might also be – and probably is, considering the imprecision of his claims – seeking damages arising from acts of the parties that are not "inextricably intertwined" with the state court's decision. To the extent that he seeks such damages, the court's dismissal must still be upheld for failure to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). *See Amro v. Boeing Co.*, 232 F.3d 790, 796 (10th Cir. 2000) ("[W]e may affirm the district court's decision for any reason

supported by the record."). As noted by the district court, the conclusory nature of the claims makes it nearly impossible to tell exactly what the claims are or who they are against. *See* R., Vol. 3 at 110 n.6 ("Plaintiff alleges in conclusory fashion that defendants collectively conspired to unfairly and in bad faith take his property. . . . At no point in his complaint does plaintiff make clear exactly which defendant did what alleged violation."). Further, because there is no specificity to the claims, it is impossible to tell if they would be precluded under Kansas preclusion law. *See Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (holding that "[t]he preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute," 28 U.S.C. § 1738, which "directs a federal court to refer to the preclusion law of the State in which judgment was rendered").

The district court's dismissal of Mr. Orcutt's claims against defendants-appellees is AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

WILLIAM E. ORCUTT, Plaintiff-Appellant, v. BRANDON LIBEL, et al., Defendants-Appellees.	No. 09-3293 (D.C. No. 2:09-CV-02025-MLB-DJW)

ORDER

(Filed Jun. 15, 2010)

Before **McKay**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and **Ebel**, Circuit Judge.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court,

/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER, Clerk